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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 West Palm Beach Police Pension Fund, et al.,

No. CV-23-01887-PHX-SHD

10 Plaintiffs,

ORDER

11 v.

12 Leslie's Incorporated, et al.,

13 Defendants.
14

15 Pending before the Court is the Motion to Dismiss (the "Motion") filed by
16 Defendants Leslie's, Inc. ("Leslie's"), Michael Egeck, and Steven Weddell (collectively,
17 "Defendants"). (Doc. 34.) Lead Plaintiff Treasurer of the State of North Carolina (the
18 "Treasurer") opposes the Motion. (Doc. 37.) For the following reasons, the Court **grants**
19 the Motion and dismisses the Consolidated Complaint with leave to amend.¹

20 **I. FACTUAL BACKGROUND**

21 In 2020, significant events caused the price of chlorine-based products to
22 "skyrocket": first, the COVID-19 pandemic, during which more individuals installed and
23 used home swimming pools; and, second, a Louisiana fire, which destroyed approximately
24 40% of the country's chlorine tablet supply. Seeing an opportunity, Leslie's—a national
25 pool and spa retail company—drastically increased its supply of chlorine-based products
26 between 2021 and 2023, communicating to shareholders its belief that the increase would
27 be necessary to sustain both the existing heightened demand, as well as expected future

28 ¹ The parties did not request oral argument, so the Court decides this Motion without holding a hearing. See LRCiv 7.2(f).

1 demand. Unfortunately for Leslie’s and its shareholders, the heightened demand for the
 2 historically higher inventory fizzled out, and future demand did not materialize. Customers
 3 had stockpiled chlorine-based products, reducing demand and Leslie’s earnings, which
 4 ultimately resulted in Leslie’s announcing it was adjusting its fiscal outlook for 2023.
 5 Leslie’s stock price dropped after the announcement, and this suit followed.

6 **A. The Parties**

7 This is a securities class action brought by the Treasurer and others against
 8 Defendants on behalf of “those who purchased or otherwise acquired Leslie’s common
 9 stock between February 3, 2022 and July 13, 2023” (the “Class Period”). (Doc. 30 ¶ 1.)²
 10 The Treasurer “manages over \$120 billion in assets for the benefit of nearly one million
 11 active and retired public employees, including teachers, police officers, firefighters, and
 12 public servants throughout North Carolina”—assets that included Leslie’s common stock
 13 during the class period. (*Id.* ¶ 13.) Defendant Leslie’s is “a national retailer of pool and
 14 spa supplies, equipment, and repair services,” and its stock is traded on the U.S. stock
 15 market under the symbol “LESL.” (*Id.* ¶ 15.) Defendants Egeck and Weddell were at all
 16 relevant times Leslie’s Chief Executive Officer and Chief Financial Officer, respectively.
 17 (*Id.* ¶¶ 16–17.) Weddell stepped down from this position in August 2023. (*Id.* ¶ 17.) The
 18 Treasurer alleges both individuals, among other things, “directly participated in” Leslie’s
 19 management; were “directly involved in the day-to-day operations of [Leslie’s] at the
 20 highest levels”; were “privy to confidential proprietary information concerning [Leslie’s]
 21 and its business and operations”; were involved to some degree “in the oversight or
 22 implementation of [Leslie’s] internal controls”; and were involved to some degree with the
 23 allegedly false and misleading statements and information that purportedly violated
 24 securities laws. (*Id.* ¶ 19.)

25 **B. Broad-Level Overview of Events**

26 In 2020, Leslie’s boasted sales growth during the COVID-19 pandemic. For
 27 example, its “[n]ew pool permit activity grew 32% through July 2020 compared to the
 28

² The Consolidated Complaint (Doc. 30) is the operative complaint. (*See* Doc. 26.)

1 same period in 2019.” (*Id.* ¶ 21.) Also in 2020, Leslie’s conducted its Initial Public
2 Offering (“IPO”), selling 40 million shares at \$17.00 per share. (*Id.* ¶ 22.) In the offering
3 documents, Leslie’s referred to its pool and spa installations as a “predictable, ‘annuity-
4 like stream of chemical, equipment, and service revenue.’” (*Id.* ¶ 23.) Leslie’s also stated
5 that it “play[s] primarily in the aftermarket business,” and has “a highly predictable,
6 recurring revenue model” in which over “80% of [its] product sales are non-discretionary
7 and recurring in nature.” (*Id.*) Eighty percent of Leslie’s chemical sales, too, were touted
8 as “derived from proprietary brands and custom-formulated products, which allow[s]
9 [Leslie’s] to create an entrenched consumer relationship” and “control [its] supply.” (*Id.*)

10 In the summer of 2020, however, “a fire shut down the Louisiana manufacturing
11 facility of the nation’s second-largest maker of dry chlorine products,” which resulted in
12 “[a]pproximately 40% of the country’s chlorine tablet supply [being] destroyed.” (*Id.*
13 ¶ 25.) The fire caused “significant shortages in Trichlor – a chlorine-based chemical
14 product used for pool maintenance,” which in turn caused the “market price for chlorine-
15 based products, including Trichlor, [to] skyrocket[.]” (*Id.*)

16 Leslie’s, for its part, “leveraged its relationships with suppliers to maintain strong
17 Trichlor inventory levels in 2020 and into 2021.” (*Id.* ¶ 26.) During a February 2021
18 earnings conference call, Egeck addressed the effects of the chlorine shortages, stating that
19 Leslie’s would “have supply of products that other retailers don’t,” which would allow
20 Leslie’s to not only “capture a sale, but more importantly, . . . capture new customers.”
21 (*Id.*) During this call and again in a May 2021 earnings call, Egeck stated that Leslie’s was
22 “confident in” and “constantly managing” its supply chain.” (*Id.* ¶¶ 27–28.)

23 The Treasurer alleges the “chlorine shortage and price increases served as a windfall
24 for Leslie’s.” (*Id.* ¶ 29.) “By the end of January 2021, [Leslie’s] stock price had increased
25 from the \$17.00 per share IPO price to over \$28.00 per share” and by June 2021, “the stock
26 was trading above \$29.75 per share.” (*Id.* ¶ 30.) In February, June, and September 2021,
27 Leslie’s “conducted secondary offerings of . . . stock.” (*Id.* ¶ 31.) In each of these
28 secondary offerings, “[c]ompany insiders and investors,” including Egeck and Weddell,

1 sold millions of dollars’ worth of stock. (*Id.*) “Leslie’s did not receive proceeds from any
 2 of these offerings.” (*Id.*) In the offering documents for these secondary offerings, Leslie’s
 3 again promoted its “annuity-like,” “highly predictable, recurring revenue” business model.
 4 (*Id.* ¶ 32.)

5 Towards the end of 2021, however, the “chlorine supply chain stabilized just as
 6 Leslie’s was increasing inventory in Trichlor and other products.” (*Id.* ¶ 33.) For example,
 7 by January 2022 (the end of the first fiscal quarter of 2022), Leslie’s inventory value
 8 increased 40% year over year from FQ1 of 2021,³ and “[b]y the end of [FQ1 of] 2023 . . .
 9 reported inventory was . . . more than 75% higher than [Leslie’s] inventory at the end of
 10 [FQ1 of] 2022.” (*Id.*) “[B]y 2022, [Leslie’s] distribution centers had far too much
 11 inventory, which was being offloaded and pushed into stores even though the stores did
 12 not have the physical space to store the chemical inventory,” such that “Leslie’s stores were
 13 refusing to accept shipments of chlorine-based products and other pool supplies and were
 14 trying to send inventory back to Leslie’s distribution centers.” (*Id.* ¶ 35.) “[C]hemical
 15 treatment products, including Trichlor, were being stored in closet space and outside at the
 16 stores in parking lots.” (*Id.* ¶ 36.) Eventually, Leslie’s had to “use several third-party off-
 17 site storage facilities” to store the excess product, “incurring millions of dollars in
 18 incremental inventory adjustment costs.” (*Id.* ¶ 38.)

19 “[S]tarting in late 2021,” Leslie’s “had letters sent to [its] loyalty program members
 20 – customers who represented more than 70% of [Leslie’s] total sales,” which “urged
 21 customers to ‘purchase early prior to the pool season’ and stock up on treatment products
 22 because [Leslie’s could not] ‘guarantee product availability’ later in the year.” (*Id.* ¶ 34.)
 23 The “letters and a campaign to have Leslie’s stores push customers to buy more treatment
 24 products than were needed succeeded in boosting sales going into 2022, but at the cost of
 25 future sales,” because the “product customers were sitting on at the end of 2022 . . . would
 26 directly reduce the volume of treatment product that would be purchased for the 2023

27 ³ Leslie’s “fiscal year ends on the Saturday closest to September 30th,” so its fiscal
 28 years ended on October 2, 2021 for 2021 and October 1, 2022 for 2022. (Doc. 30 ¶ 33 &
 n.3.) Accordingly, the end of Leslie’s first quarter for the fiscal year in 2022 was in January
 2022. (*See id.*) The Court uses “fiscal” or “FQ” to describe Leslie’s fiscal quarters.

1 season.” (*Id.*) The Treasurer cites, for example, a former Leslie’s “allocations and
 2 planning analyst” who stated “that, by late 2022, it was internally recognized that [Leslie’s]
 3 financial projections for 2023 were unachievable given that there was too much inventory
 4 in the distribution centers.” (*Id.* ¶ 35.)

5 **C. Class Period Events**

6 **1. The Fiscal Q1 2022 Earnings Report, Conference Call, and Form** 7 **10-Q**

8 On February 3, 2022, Leslie’s issued a press release stating that, “compared to the
 9 prior year period, sales increased 27.5% to \$184.8 million, with comparable sales growth
 10 of 20.5% and gross profit increased 30.2% to \$67.3 million, with gross margins increasing
 11 70 basis points.” (*Id.* ¶ 39.) Quoting Egeck, the press release stated Leslie’s “strong
 12 execution of [its] strategic growth initiatives drove record first quarter results.” (*Id.* ¶ 40
 13 (emphasis omitted).) On a conference call the same day, Egeck stated that Leslie’s was
 14 “benefiting from strong secular macro trends that are driving durable consumer demand
 15 and are showing no signs of slowing.” (*Id.* ¶ 41 (emphasis omitted).) Weddell “reported
 16 that, while inventory conditions in the industry, particularly for chemicals and equipment,
 17 remained constrained, [Leslie’s] end-of-quarter inventory was up 40% to \$245 million
 18 compared to \$175 million at the end of the prior year quarter.” (*Id.* ¶ 42.)

19 The next day, Leslie’s filed its Form 10-Q for the fiscal quarter with the Securities
 20 and Exchange Commission (“SEC”), and the Form 10-Q stated that there were “no material
 21 changes from the risk factors disclosed in [its] Annual Report on Form 10-K for the year
 22 ended October 2, 2021.” (*Id.* ¶ 43.) The referenced Annual Report stated in its risk
 23 disclosures that Leslie’s “may not be able to successfully manage [its] inventory to match
 24 consumer demand, which could have a material adverse effect on [the] business, financial
 25 condition, and results of operations.” (*Id.* (emphasis omitted).) It also disclosed that, if
 26 Leslie’s “sales forecasts overestimate consumer demand, [Leslie’s] may experience higher
 27 inventory levels, which could result in the need to sell products at lower than anticipated
 28 prices, leading to decreased profit margins.” (*Id.* (emphasis omitted).) Weddell signed the

1 Form 10-Q, and a certification signed by Weddell and Egeck was attached. (*Id.*)

2 **2. The Fiscal Q2 2022 Earnings Report and Conference Call**

3 On May 5, 2022, Leslie's issued a press release stating that, "compared to the prior
4 year period, sales increased 18.5% to \$228.1 million, with comparable sales growth of
5 13.3%, and gross profit increased 19.5% to \$85.6 million, with gross margins increasing
6 30 basis points." (*Id.* ¶ 44.) Quoting Egeck, the press release stated that the "non-
7 discretionary, recurring nature of after-market pool industry demand, [Leslie's] strong
8 execution against [its] strategic growth initiatives, and an advantaged inventory position
9 were all key drivers of [its] performance." (*Id.* ¶ 45 (emphasis omitted).)

10 The same day, Leslie's held a conference call with analysts and investors, in which
11 Egeck told listeners that "the industry was still facing constrained supply conditions"
12 concerning chlorine tabs and Trichlor. (*Id.* ¶ 46.) As for Leslie's, however, it was "happy
13 with [its] current supply, though the flow of it could be a little more front loaded," and it
14 was "in line to buy even more next year" to "feed the machine [it] created for chemical
15 consumption and [Leslie's] growing consumer profile." (*Id.* (emphasis omitted).)
16 Weddell, for his part, stated that Leslie's "continue[d] to proactively work with [its] vendor
17 partners to manage the flow of inventory" and "identify opportunities to strategically invest
18 in inventory to meet heightened consumer demand and prepare for pool season." (*Id.* ¶ 47
19 (emphasis omitted).) And, in response to questions about whether Leslie's was "seeing its
20 customers making non-discretionary purchases earlier than usual," Egeck said that Leslie's
21 sales tracking did not show "any indication of any meaningful pull-forward" or "any
22 indication of a decrease in demand." (*Id.* ¶¶ 48–49 (emphases omitted).)

23 **3. The June 2022 Analyst Conference Calls**

24 At an analyst conference call on June 6, 2022, Weddell stated that Leslie's "made a
25 strategic decision last year to heavily invest in inventory," so it "worked very hard and
26 closely with [its] vendors to procure effectively as much inventory as [it could] to meet the
27 heightened demand that [it saw]." (*Id.* ¶ 50.) The next day, at a different analyst conference
28 call, Weddell stated that he "wish[ed] [Leslie's] had more" inventory, and that Leslie's

1 would “still not have all the inventory that [it] need[ed] to meet all the demand that[] [was]
2 out there.” (*Id.* ¶ 51.)

3 **4. The Fiscal Q3 2022 Earnings Report**

4 On August 5, 2022, Leslie’s issued a press release stating that its financial
5 performance in that quarter was “adversely impacted by ‘execution issues’ at [its] New
6 Jersey distribution center,” but that even so, “sales increased 12.9% to \$673.6 million,
7 compared to the prior year period, with a comparable sales increase of 7.4%.” (*Id.* ¶ 52.)
8 Although “gross profit increased 7%,” “gross margins decreased by 250 basis points,
9 ‘primarily due to shifts in business mix, decreased product margin and higher distribution
10 expenses.” (*Id.*) Leslie’s adjusted its sales outlook, gross profit outlook, and adjusted
11 Earnings Before Interest, Taxes, Depreciation, and Amortization (“EBITDA”) outlook for
12 2022 accordingly. (*Id.*)

13 The same day, Leslie’s held a conference call with analysts and investors, in which
14 Weddell stated that “demand for [its] core nondiscretionary product remain[ed] solid” and
15 Egeck stated demand was “very much alive and stable.” (*Id.* ¶ 53 (emphasis omitted).)
16 Concerning inventory, Weddell stated that “Leslie’s ended the quarter with \$361 million
17 in inventory, up 61% [year over year],” which he believed “appropriate given the
18 uncertainty of supply for the balance of the year and into fiscal 2023.” (*Id.* ¶ 54 (emphasis
19 omitted).)

20 **5. The Fiscal Q4 2022 and Fiscal Year 2022 Earnings Report and** 21 **Investor Day Conference, and the Form 10-K**

22 On November 30, 2022, Leslie’s issued a press release stating that, “compared to
23 fiscal [year] 2021, sales for the year had increased 16.3%” and “gross profit also increased
24 13.2%,” with a “gross margin of 43.1%.” (*Id.* ¶ 57.) The press release quoted Egeck, who
25 stated that Leslie’s “remain[ed] focused on delivering against [its] long-term objectives
26 supported by the recurring non-discretionary demand of the aftermarket pool industry, the
27 competitive advantages of [its] integrated network of physical and digital assets and the
28 execution of [its] strategic growth initiatives.” (*Id.* ¶ 58 (emphasis omitted).)

1 The same day, Leslie's held an earnings call, during which Egeck stated that Leslie's
 2 did "not see a scenario where [it gave] back significant portions of the gains over the last
 3 3 years." (*Id.* ¶ 59 (emphasis omitted).) Weddell, in turn, reported that Leslie's increased
 4 its inventory by 82% over the past fiscal year, which he said was "appropriate given the
 5 uncertainty of supply going into fiscal [year] 2023." (*Id.* ¶ 60 (emphasis omitted).)
 6 Leslie's would "pursue opportunities to reduce inventory" once it saw "an improvement in
 7 supply chains." (*Id.* ¶ 61 (emphasis omitted).)

8 Leslie's also filed its fiscal year 2022 Form 10-K with the SEC, where it identified
 9 as a risk factor that it "may not be able to successfully manage [its] inventory to match
 10 consumer demand, which could have a material adverse effect on [its] business, financial
 11 condition, and results of operations." (*Id.* ¶ 62 (emphasis omitted).) If Leslie's were to
 12 overestimate demand, it could "experience higher inventory levels, which could result in
 13 the need to sell products at lower than anticipated prices, leading to decreased profit
 14 margins." (*Id.* (emphasis omitted).) Egeck and Weddell signed the Form 10-K and its
 15 certifications. (*Id.*)

16 **6. The Fiscal Q1 2023 Earnings Report and Form 10-Q**

17 On February 2, 2023, Leslie's issued a press release, which stated that "sales
 18 increased 5.6% to \$195.1 million" year over year, but "poor weather in the quarter caused
 19 a 4% decrease in comparable sales." (*Id.* ¶ 63.) It also "noted a 3.0% decrease [in gross
 20 profit] . . . compared to the prior year period, and gross margin was 33.5%, down 290 basis
 21 points year-over-year." (*Id.*)

22 The same day, on a conference call with analysts and investors, Egeck stated that
 23 Leslie's "saw decreased consumer confidence in the quarter, including consumer demand
 24 for Trichlor." (*Id.* ¶ 64.) He explained that it was a "super small quarter" with "upsized
 25 weather impact," so all should be "very careful not to draw any trends for the full year from
 26 it." (*Id.* (emphases omitted).) Weddell announced that Leslie's increased its inventory
 27 76% year over year, stating that when Leslie's "believe[d] [it had] sufficient inventory to
 28 meet consumer demand through season, and after [it saw] supply chains across the industry

1 become more predictable,” it would “strategically manage inventory levels down.” (*Id.*
 2 ¶ 65 (emphasis omitted).) In response to questions about why the inventory “kind of
 3 pop[ped] off the page,” Weddell stated that inventory was up because of “sales growth over
 4 the last . . . few years,” and because Leslie’s made “the strategic decision . . . to intentionally
 5 pull forward 2023 receipts in advance of season.” (*Id.* ¶ 66 (emphases omitted).) Weddell
 6 denied that the inventory was “stocking up for kind of longer-term needs.” (*Id.* (emphasis
 7 omitted).)

8 The next day, Leslie’s filed its Form 10-Q for the fiscal quarter, which denied any
 9 “material changes from the risk factors disclosed in its” fiscal year 2022 10-K. (*Id.* ¶ 69.)
 10 Weddell signed the Form 10-Q and both Weddell and Egeck signed its certifications. (*Id.*)

11 **7. The Fiscal Q2 2023 Earnings Report**

12 On May 3, 2023, Leslie’s issued a press release, which stated that “sales for the
 13 quarter decreased 6.7% and comparable sales decreased 13.5%,” gross profit decreased
 14 16.9%, and “gross margins fell 410 basis points to 33.4% for the quarter.” (*Id.* ¶ 70.)
 15 Leslie’s attributed the decrease in sales to the “impact of the normalization of the seasonal
 16 purchasing cycle to pre-pandemic patterns and adverse weather.” (*Id.* (emphasis omitted).)

17 The same day, in a conference call with analysts and investors, Egeck stated that
 18 Leslie’s “believe[d] [it was] seeing a return to a more normalized pre-pandemic revenue
 19 contribution breakdown,” which was a “timing shift” rather than a “reduction in underlying
 20 demand for the year.” (*Id.* ¶ 72 (emphases omitted).) Egeck also, for the first time, stated
 21 that the previous year, Leslie’s “sent a letter to [its] loyalty [program customers] saying [it]
 22 couldn’t guarantee product availability in the second half and encouraged them to purchase
 23 early prior to the pool season.” (*Id.* ¶ 74.) The Treasurer alleges that Defendants did not
 24 disclose that “the real purpose of the letter was to rid [Leslie’s] of excess inventory that
 25 had begun piling up at the end of 2021 as Leslie’s inventory of chemical
 26 products . . . exceeded the volumes necessary to satisfy predicted demand.” (*Id.* ¶ 75.)

27 **D. Allegations of Falsity/Misleading Nature**

28 The Treasurer alleges that many of Defendants’ statements were “materially false

1 and/or misleading at the time they were made because they failed to disclose . . . material
 2 adverse facts . . . about Leslie’s excess inventory of chlorine-based products and the excess
 3 inventory of these products that had been purchased and were held by Leslie’s customers.”
 4 (*Id.* ¶ 77.) These four omitted facts include that (1) “Leslie’s inventory of chlorine-based
 5 products exceeded the volumes necessary to satisfy predicted demand” and (2) to manage
 6 this excess inventory, Leslie’s had to retain chemical storage companies and directed
 7 employees to “encourage customers to stock up on chlorine-based products,” including
 8 through “letters to loyalty customers.” (*Id.*) This allegedly resulted in a reduced demand
 9 for chlorine-based products “as [Leslie’s] customers became oversaturated with chlorine-
 10 based products” and reduced gross margin, “as [Leslie’s] was stuck with over-priced and
 11 over-transported inventory at a time when it was ‘unable to successfully maintain [the prior
 12 years’] higher pricing levels.” (*Id.* (second alteration in original).)

13 **E. End-of- and Post-Class-Period Events**

14 **1. The July 2023 Press Release and Form 8-K**

15 On July 13, 2023, Leslie’s filed a Form 8-K with the SEC and issued a press release,
 16 which stated that Weddell would depart from Leslie’s effective August 7, 2023, and that
 17 the quarter’s earnings “were well below market expectations.” (*Id.* ¶ 78.) The press release
 18 quoted Egeck’s statement that “low double digit traffic declines in [Leslie’s] Residential
 19 and Pro businesses drove negative comps across both discretionary and non-discretionary
 20 categories” and that customer surveys indicated “increased price sensitivity and that
 21 consumers entered the pool season with a greater than normal amount of chemicals leftover
 22 from [the previous] year.” (*Id.* ¶ 79.) Gross margins, too, were “down year-over-year due
 23 to higher product costs that [Leslie’s] could not pass through to consumers, the impact of
 24 higher distribution-related expenses and capitalized costs as [Leslie’s] reduce[d] inventory
 25 from peak levels, and fixed cost deleverage.” (*Id.* ¶ 80.)

26 The price of Leslie’s stock dropped from a closing price of \$9.52 per share (July 13)
 27 to a closing price of \$6.70 per share (July 14). (*Id.* ¶ 81.) “Leslie’s stock price continued
 28 to fall another \$1.24 per share the following trading day, or over 18%, closing at \$5.46 per

1 share on July 17, 2023.” (*Id.*) In addition, several analysts downgraded their ratings for
2 Leslie’s stock. (*Id.* ¶ 118.)

3 **2. The August 2023 Press Release and Earnings Conference Call**

4 On August 2, 2023, Leslie’s issued a press release, which “reported the same results
5 given in its preliminary release” on July 13. (*Id.* ¶ 82.) Leslie’s also held a conference call
6 with investors, in which Egeck stated that “a portion of [Leslie’s] customers had a greater-
7 than-normal amount of chemicals left over from last year,” which was “not something
8 [Leslie’s had] seen before.” (*Id.*) He also stated that gross margins were affected in part
9 by “the inventory buildup and the associated costs with that, offsite storage, additional
10 labor, [and] increased transportation, though those were flexed up given a rather
11 extraordinary inventory levels [Leslie’s] took to ensure supply.” (*Id.* ¶ 83.) They were
12 also affected by “lower[ed] chemical prices in the face of lower demand” and higher
13 product costs for Leslie’s. (*Id.* ¶ 84.)

14 **3. The November 2023 Press Release, Earnings Conference Call,** 15 **and Form 10-K**

16 On November 28, 2023, Leslie’s issued a press release, which stated that “sales
17 decreased 9.1% compared to the prior year same quarter,” and “gross profit decreased
18 26.3% compared to the prior year period due in part to inventory-related expenses,
19 including a larger-than-expected adjustment that had to be taken after completion of
20 [Leslie’s] year-end physical inventory count, and the expensing of capitalized distribution
21 costs associated with the reduction in inventory.” (*Id.* ¶ 86.)

22 The same day, Leslie’s held a conference call, in which Scott Bowman—the new
23 CFO—stated that Leslie’s “incurred unexpected incremental inventory adjustment costs.”
24 (*Id.* ¶ 87.) Bowman identified the “root of the problem” for the inventory adjustments as
25 “having too much inventory.” (*Id.* ¶ 89.)

26 The next day, Leslie’s filed its Form 10-K with the SEC for the 2023 fiscal year.
27 (*Id.* ¶ 90.) The Form 10-K disclosed that, “as of September 30, 2023, [Leslie’s] did not
28 maintain effective internal control over financial reporting because of material weaknesses

1 related to the design and/or operations of controls that were not performed at a sufficient
 2 level of precision” with regard to “the performance of physical inventories and the
 3 validation of data utilized in inventory costing.” (*Id.*) It also disclosed that Leslie’s was
 4 engaged in remediation efforts. (*Id.* ¶ 92.)

5 **II. PROCEDURAL HISTORY**

6 On September 8, 2023, Plaintiff West Palm Beach Police Pension Fund filed the
 7 instant suit against Defendants. (Doc. 1.)

8 After considering briefing to appoint a lead plaintiff and approve counsel (Docs.
 9 12–23), the Court granted the Treasurer’s Motion for Appointment of Lead Plaintiff and
 10 Approval of Selection of Lead Counsel, appointing the Treasurer as Lead Plaintiff. (Doc.
 11 24.)

12 On February 20, 2024, the Treasurer filed a Consolidated Complaint, asserting
 13 claims for (1) violation of § 10(b) of the Exchange Act and SEC Rule 10b-5 and (2)
 14 violation of § 20(a) of the Exchange Act. (Doc. 30 ¶¶ 129–44.)

15 On April 22, 2024, Defendants filed the Motion to Dismiss. (Doc. 34.) The motion
 16 has since become fully briefed. (Docs. 37, 38.)

17 **III. LEGAL STANDARD**

18 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
 19 accepted as true” and construed in a light most favorable to the plaintiff, “to state a claim
 20 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation
 21 marks omitted); *Irving Firemen’s Relief & Retirement Fund v. Uber Techs., Inc.*, 998 F.3d
 22 397, 403 (9th Cir. 2021). A claim is plausible if the plaintiff pleads “factual content that
 23 allows the court to draw the reasonable inference that the defendant is liable for the
 24 misconduct alleged.” *Iqbal*, 556 U.S. at 678. In making this determination, the Court does
 25 not accept legal conclusions as true, nor does the Court consider “[t]hreadbare recitals of
 26 the elements of a cause of action, supported by mere conclusory statements.” *Id.*; *see also*
 27 *id.* (“Nor does a complaint suffice if it tenders naked assertions devoid of further factual
 28 enhancement.” (citation modified)). That said, “a complaint attacked by a Rule 12(b)(6)

1 motion to dismiss does not need *detailed* factual allegations.” *Bell Atl. Corp. v. Twombly*,
 2 550 U.S. 544, 555 (2007) (emphasis added). A “well-pleaded complaint may proceed even
 3 if” actual proof of those facts “is improbable and that a recovery is very remote or
 4 unlikely.” *Id.* at 556 (quotation marks omitted). A court still applies common sense in
 5 evaluating a motion to dismiss, however, *Iqbal*, 556 U.S. at 664, and need not “check [its]
 6 disbelief at the door.” *Nguyen v. Endologix, Inc.*, 962 F.3d 405, 415 (9th Cir. 2020).

7 **IV. DISCUSSION**

8 Defendants seek dismissal of both counts asserted in the Consolidated Complaint
 9 for failure to state a claim based on three arguments. First, they argue the Treasurer’s
 10 allegations do not meet the particularity requirement for fraud claims under Federal Rule
 11 of Civil Procedure 9(b). (Doc. 34 at 1.) Second, they argue the Treasurer did not
 12 sufficiently plead that “each Defendant had an intent to deceive that is cogent and
 13 compelling.” (*Id.* at 2.) Third, they argue the Treasurer did not sufficiently allege loss
 14 causation. (*Id.*) The Court takes Defendants’ arguments in turn.

15 **A. Documents Attached to Defendants’ Motion**

16 Before turning to the merits, the Court first examines whether it can consider the
 17 documents attached by Defendants to their motion. (*See* Docs. 34-3, 34-4.) Specifically,
 18 Defendants attach the following: (1) copies of transcripts from several earnings or
 19 conference calls by Leslie’s, (2) copies or excerpts of certain SEC filings by Defendants
 20 (*e.g.*, Form 10-K), and (3) a copy of Leslie’s July 13, 2023, press release. (*See* Doc. 34-
 21 2.) Defendants argue that the Court may consider each of these documents in ruling on the
 22 Motion either because the document was incorporated by reference into the Consolidated
 23 Complaint or because the document is subject to judicial notice. (Doc. 34 at 3 nn. 3, 5; *id.*
 24 at 5 n.6.) The Treasurer “do[es] not object to the Court taking judicial notice of the exhibits
 25 which were publicly filed (Exs. 10–11) nor incorporating by reference exhibits which form
 26 the basis of the complaint (Exs. 1–9) for the limited purpose of identifying their contents,”
 27 but does object to the extent Defendants attempt to use the exhibits “for the truth of the
 28 matters asserted therein or to raise a factual dispute.” (Doc. 37 n.2 (quotation marks

omitted).)

Because the parties agree that the Court may consider Defendants’ attached exhibits, and the Court’s independent review confirms that the documents are either incorporated by reference or subject to judicial notice, the Court will consider them in ruling on the Motion. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (“An investor call transcript submitted to the SEC generally qualifies as a source whose accuracy cannot reasonably be questioned.” (citation modified)); *id.* at 1002 (“A defendant may seek to incorporate a document into the complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.” (citation modified)); *Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (noting that “SEC filings” are subject to judicial notice); *Patel v. Parnes*, 253 F.R.D. 531, 545–47 (C.D. Cal. 2008) (taking judicial notice of SEC Forms 4 and press releases and collecting cases).

The Court does not, however, take judicial notice of facts in the documents that are “subject to varying interpretations,” such that there “is a reasonable dispute as to what the [document] establishes.” *Khoja*, 899 F.3d at 1000 (citation omitted). Nor does the Court “assume the truth of an incorporated document if such assumptions only serve to dispute facts stated in a well-pleaded complaint.” *Id.* at 1003.

B. Count One: Violation of Section 10(b) and Rule 10b-5

“Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission’s Rule 10b-5 prohibit making any material misstatement or omission in connection with the purchase or sale of any security.” *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 267 (2014). The elements that a plaintiff must sufficiently plead are (1) “a material misrepresentation or omission by the defendant” (*i.e.*, falsity),⁴ (2) scienter, (3) “a connection between the misrepresentation or omission and the purchase or sale of a security,” (4) “reliance upon the misrepresentation or omission,” (5) economic loss, and (6) loss causation. *Id.* (citation omitted); *In re Genius Brands Int’l*,

⁴ Pure omissions—“when a speaker says nothing, in circumstances that do not give any particular meaning to that silence”—are not actionable. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263–65 (2024).

1 *Inc. Sec. Litig.*, 97 F.4th 1171, 1180 (9th Cir. 2024). “Each of these elements must be
 2 independently satisfied.” *In re Nektar Therapeutics Sec. Litig.*, 34 F.4th 828, 835 (9th Cir.
 3 2022).

4 Under the Private Securities Litigation Reform Act (“PSLRA”), a plaintiff must
 5 meet a heightened pleading standard. *Nguyen*, 962 F.3d at 413. In addition, under Federal
 6 Rule of Civil Procedure 9(b), when “alleging fraud . . . a party must state with particularity
 7 the circumstances constituting fraud.” The Treasurer’s claims under the Exchange Act and
 8 Rule 10b-5 are subject to Rule 9(b)’s higher pleading standard. *In re Cloudera, Inc.*, 121
 9 F.4th 1180, 1186 (9th Cir. 2024). “To properly plead fraud with particularity under Rule
 10 9(b), a pleading must identify the who, what, when, where, and how of the misconduct
 11 charged.” *Id.* at 1187 (citation omitted). Defendants challenge whether the Treasurer
 12 sufficiently pled the falsity, scienter, and loss causation elements under these heightened
 13 standards. (*See* Doc. 34 at 1–2.)

14 **1. Falsity**

15 “To determine whether a statement or omission is misleading, [the Court’s] central
 16 inquiry is whether a reasonable investor would have been misled about the nature of his
 17 investment.” *Genius Brands*, 97 F.4th at 1181 (quotation marks omitted). “This is an
 18 objective inquiry that requires [the Court] to assess whether an investor who had been
 19 reasonably diligent in reviewing the statement or omission at issue would have been
 20 misled.” *Id.* (quotation marks omitted). “Falsity is alleged when a plaintiff points to
 21 defendant’s statements that directly contradict what the defendant knew at the time.” *E.*
 22 *Ohman J:or Fonder AB v. NVIDIA Corp.*, 81 F.4th 918, 928 (9th Cir. 2023) (citation
 23 omitted). “Even if a statement is not false, it may be misleading,” which is met if a
 24 statement would “give a reasonable investor the impression of a state of affairs that differs
 25 in a material way from the one that actually exists.” *Id.* (citations omitted).

26 Importantly, falsity must be pled with particularity. *In re Sorrento Therapeutics,*
 27 *Inc. Sec. Litig.*, 97 F.4th 634, 640 (9th Cir. 2024). The complaint “must explain what is
 28 false or misleading about the purportedly fraudulent statement,” and why the statements

1 “were false or misleading at the time they were made.” *Id.* (quotation marks omitted); *see*
 2 *also* 15 U.S.C. § 78u-4(b)(1). A “litany of alleged false statements, unaccompanied by the
 3 pleading of specific facts indicating why those statements were false, is insufficient.”
 4 *Cloudera*, 121 F.4th at 1187 (quotation marks omitted).

5 **a. Sufficiency Under Pleading Requirements**

6 Defendants first argue that the Treasurer has not sufficiently pled that each of the
 7 alleged thirty-two false or misleading statements⁵ were false in light of the four alleged
 8 “omitted facts” in the Consolidated Complaint. (Doc. 34 at 7–9.) Defendants argue the
 9 Treasurer has made “it impossible to discern why each challenged statement was false or
 10 misleading when made.” (*Id.* at 7.) The Treasurer responds that the “allegations provide[d]
 11 Defendants adequate notice of the particular conduct at issue to defend against the fraud
 12 claims.” (Doc. 37 at 9.)

13 The Court agrees with Defendants that the Treasurer has not sufficiently alleged the
 14 “reason or reasons why the statement is misleading,” as required by the PSLRA. 15 U.S.C.
 15 § 78u-4(b)(1). Put simply, the Treasurer has not connected the dots between the alleged
 16 misstatements and omitted facts to specify what omitted fact made the misstatement false,
 17 what in the specific misstatement was rendered false by the specific omitted fact, or how
 18 the omitted fact made the misstatement false. *See Metzler Inv. GMBH v. Corinthian Colls.,*
 19 *Inc.*, 540 F.3d 1049, 1071 (9th Cir. 2008) (holding complaint failed to comply with the
 20 PSLRA because its “connection between the falsity of the[] statements and the [non-
 21

22 ⁵ Defendants created, and attached as Appendix A to the Motion, a table titled
 23 “Summary of Alleged Misstatements in the Complaint and Reasons Why They are Non-
 24 Actionable.” (Doc. 34-1.) The table sets forth each of the alleged misstatements, along
 25 with an assigned “Statement Number,” the identity of the alleged speaker(s), and a column
 26 titled “Reasons Why Statement Is Not Actionable.” (*Id.*) The Treasurer argues the last
 27 column in the table should be stricken “as improper argument beyond the page limits
 28 permitted by the Court.” (Doc. 37 at 8 n.3.) Defendants respond that the table “does not
 add arguments but organizes them.” (Doc. 38 at 2 n.1.) Having reviewed Defendants’
 table for the purpose of determining whether the Court could properly consider it, the Court
 finds that most of the last column summarizes arguments Defendants made in their motion,
 but some of the last column contains additional argument not explicitly contained in
 Defendants’ briefing. Specifically, Defendants’ table at times ties specific statements to
 arguments that were not made in their briefing. The Court only considers arguments made
 by the parties in their briefing and does not consider new arguments made in the last
 column.

disclosure was] extraordinarily vague” and the PSLRA “requires a clearer explication of why a statement is false”). Take, for example, Statement 3⁶—

We have an always-on procurement strategy at Leslie’s. Our team continues to proactively work with our vendor partners to manage the flow of inventory, and we continue to identify opportunities to strategically invest in inventory to meet heightened consumer demand and prepare for pool season.

(Doc. 30 ¶ 42 (emphasis omitted); Doc. 34-1 at 3.) The Consolidated Complaint does not make clear what, if anything, is specifically false about this statement: that Leslie’s has an “always-on procurement strategy,” that Leslie’s was “proactively work[ing] with [its] vendor partners to manage the flow of inventory,” that Leslie’s was “identify[ing] opportunities to strategically invest in inventory,” that there was a “heightened consumer demand,” or that Leslie’s was “prepar[ing] for pool season”? Nor is it clear which, or if all, of the four allegedly omitted facts rendered the statement—or any part of it—false or misleading. (*See id.* ¶ 77 (referring to all paragraphs with alleged misstatements).) Indeed, the Treasurer simply concludes that Defendants’ statements “were materially false and/or misleading,” but the Treasurer does not identify which or whether statements were false *or* literally true but misleading. (*Id.*) This ambiguity—the statements could be false or not false but misleading (or neither), *see E. Ohman*, 81 F.4th at 928—only confirms that the Consolidated Complaint falls short of the PSLRA’s specificity requirements.

In light of the PSLRA’s “exacting requirements for pleading falsity,” *Metzler*, 540 F.3d at 1070 (citation and quotation marks omitted), the Treasurer’s allegations are insufficient. *See, e.g., United Ass’n Nat’l Pension Fund v. Carvana Co.*, 2024 WL 863709, at *10 (D. Ariz. 2024) (“[M]erely bolding and italicizing swaths of text does not assist the Court in determining which statements are allegedly misleading or why.”); *Patel*, 253 F.R.D. at 551–52 (allegations were insufficient where they did not “tie the[] reasons to particular statements; instead, the reasons appear[ed] to apply generally to the statements quoted in the preceding paragraphs”); *In re Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F.

⁶ For simplicity, the Court refers to the “Statement Number” used in Defendants’ Appendix A. (Doc. 34-1.)

1 Supp. 2d 1059, 1074–75 (N.D. Cal. 2001) (allegations were insufficient where plaintiff
 2 “quote[d] long passages from various documents and . . . highlight[ed] portions of the
 3 quoted passages” and then required the reader to “scan subsections (a) through (m) of [a
 4 single paragraph] to select those which contain[ed] the basis for the claims that the
 5 statements [were] false and misleading”); *In re Autodesk, Inc. Sec. Litig.*, 132 F. Supp. 2d
 6 833, 841–42 (N.D. Cal. 2000) (allegations, most of which contained “more than a single
 7 assertion,” were insufficient because it was not clear “what [was] alleged to be false” or
 8 “which portion [of the asserted reasons for falsity was] meant to explain why the statement
 9 quoted . . . [was] false or misleading”).

10 Further, the Treasurer’s argument that it “provide[d] adequate notice of the
 11 particular conduct at issue to defend against the fraud claim,” (Doc. 37 at 9), is unavailing
 12 because, providing notice under Rule 9(b) is only one component of a securities fraud
 13 plaintiff’s pleading burden. *Prodanova v. H.C. Wainwright & Co.*, 993 F.3d 1097, 1106
 14 (9th Cir. 2021) (noting the “dual pleading requirements” for securities fraud claims under
 15 Rule 9(b) *and* the PSLRA). In other words, it is not enough that a plaintiff complies with
 16 Rule 9(b), for it must also comply with the “formidable pleading requirements” under the
 17 PSLRA. *Glazer Cap. Mgmt., L.P. v. Forescout Techs., Inc.*, 63 F.4th 747, 765 (9th Cir.
 18 2023) (citation omitted). Thus, even if the Treasurer met the requirements of Rule 9(b)—
 19 which is not a foregone conclusion—the Treasurer has not met the pleading requirements
 20 of the PSLRA because it only offered a “litany of alleged false statements, unaccompanied
 21 by the pleading of specific facts indicating why those statements were false,” *Cloudera*,
 22 121 F.4th at 1187 (quotation marks omitted).

23 The Court will therefore dismiss the Consolidated Complaint for failure to
 24 adequately plead falsity under the PSLRA. Because the deficiencies in the Consolidated
 25 Complaint could be cured by amendment, the Court will grant the Treasurer leave to
 26 amend. *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (stating that a “district court
 27 should grant leave to amend even if no request to amend the pleading was made, unless it
 28 determines that the pleading could not possibly be cured by the allegation of other facts”

1 and that failure to grant leave to amend in such circumstances is an abuse of discretion).

2 **b. Sufficiency on the Merits**

3 Defendants also argue that the Treasurer’s alleged misstatements are not actionable
 4 under the PSLRA for a variety of reasons, including that the alleged misstatements are
 5 (1) statements of opinion, (2) statements of corporate optimism, and (3) forward-looking
 6 statements covered by the “safe harbor” of the PSLRA. (Doc. 34 at 9–14.) Because the
 7 Consolidated Complaint does not clearly identify what specifically is false in the alleged
 8 misstatements when connected with the alleged omitted facts, and in light of the Court’s
 9 grant of leave to amend, the Court determines that it would not be prudent to resolve these
 10 arguments at this time. It is possible that an allegation Defendants challenged as an
 11 unactionable statement of opinion or of corporate optimism could, after amendment, be
 12 actionable as false or misleading with additional context. *See Glazer*, 63 F.4th at 764, 770
 13 (noting that a statement is false or misleading if the statement “directly contradicts what
 14 the defendant knew at the time or omits material information” and that even statements of
 15 corporate optimism “when taken in context, may form a basis for a securities fraud claim”
 16 (citation modified)). The Court therefore will not address Defendants’ arguments that the
 17 alleged misstatements are not actionable.

18 **2. Scienter**

19 “To plead scienter, a complaint must state with particularity facts giving rise to a
 20 strong inference that defendants acted with the intent to deceive or with deliberate
 21 recklessness as to the possibility of misleading investors.” *Espy v. J2 Glob., Inc.*, 99 F.4th
 22 527, 535 (9th Cir. 2024) (quotation marks omitted). This “strong inference” “must be
 23 cogent and compelling, thus strong in light of other [countervailing] explanations, not
 24 merely reasonable or permissible.” *Id.* (alteration in original) (quotation marks omitted).
 25 Like allegations of falsity, allegations of scienter must be pled with particularity. *Sorrento*
 26 *Therapeutics*, 97 F.4th at 640. “A complaint will survive . . . only if a reasonable person
 27 would deem the inference of scienter cogent and at least as compelling as any opposing
 28 inference one could draw from the facts alleged.” *Id.* (alteration in original) (citation

1 omitted).

2 The “strong inference requirement is exacting.” *In re Finjan Holdings, Inc.*, 58
 3 F.4th 1048, 1058 (9th Cir. 2023) (quotation marks omitted); *see also Webb v. Solarcity*
 4 *Corp.*, 884 F.3d 844, 855 (9th Cir. 2018) (“The [scienter] bar . . . is not easy to
 5 satisfy . . .”). For example, a “company’s apparent error—even an embarrassing or
 6 inexplicable one—does not establish fraudulent intent, especially if the plaintiff cannot
 7 offer a plausible motive for the company’s conduct.” *Prodanova*, 993 F.3d at 1107. But
 8 the “inference that the defendant acted with scienter need not be irrefutable, *i.e.*, of the
 9 smoking gun genre, or even the most plausible of competing inferences.” *Tellabs, Inc. v.*
 10 *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 324 (2007) (quotation marks omitted). And
 11 “[e]ven if no single allegation, standing alone, is sufficient to give rise to a strong inference
 12 of scienter, a holistic review of all the allegations may combine to give rise to a strong
 13 inference of scienter.” *E. Ohman*, 81 F.4th at 940 (quotation marks omitted).

14 Defendants argue that the Treasurer has not, “and cannot, plead that any Defendant
 15 acted with ‘scienter’ or the required fraudulent intent.” (Doc. 34 at 14.) Defendants make
 16 several points in support of this argument, each of which is discussed in greater detail
 17 below. Although the Court need not address scienter in light of the Court’s dismissal on
 18 other grounds, the Court does so, in part, to focus or narrow certain disputes in future Rule
 19 12(b)(6) motion practice, which the Court assumes will take place if the Treasurer files an
 20 amended complaint.

21 **a. Motive**

22 Defendants first argue that the Consolidated Complaint “does not allege that either
 23 Egeck or Weddell had any motive to defraud investors,” and the Treasurer’s theory of
 24 scienter—“that Defendants knowingly increased Leslie’s inventory of chlorine-based
 25 products beyond predicted customer demand, only to ‘offload’ this excess inventory by
 26 encouraging stockpiling, which drove down future demand, while continuing to increase
 27 inventory”—“makes no sense” and does not meet the “strong inference” pleading standard
 28 under the PSLRA. (*Id.* at 15.) Defendants note that Egeck and Weddell “each *purchased*

1 shares” during the Class Period, “which further tips the scales against any inference of
2 scienter.” (*Id.* at 16.)

3 The Treasurer responds that it has alleged “a sufficiently strong correlation between
4 Leslie’s financial performance and Defendants’ cash awards to support a finding of
5 scienter.” (Doc. 37 at 22.) And, even if Egeck and Weddell purchased stock during the
6 Class Period, the Treasurer argues that “there are several explanations for why an
7 individual defendant would not sell stock even if she knew about [the fraud], such as a
8 desire to avoid drawing the market’s attention to the problem.” (*Id.* at 22 n.15 (alteration
9 in original) (citation omitted).) The Treasurer also notes that the absence of motive is not
10 fatal to a securities fraud claim. (*Id.* at 22.) In reply, Defendants argue that Egeck’s and
11 Weddell’s compensation cannot lend support to scienter because the Consolidated
12 Complaint does not “tie compensation to the alleged fraud.” (Doc. 38 at 7.)

13 As the Treasurer notes, the Supreme Court has held that “the absence of a motive
14 allegation is not fatal” to a “scienter inference.” *Tellabs*, 551 U.S. at 325. Instead, motive
15 is a “relevant consideration” to be considered with the other allegations “collectively”: “the
16 significance that can be ascribed to an allegation of motive, or lack thereof, depends on the
17 entirety of the complaint.” *Id.* Defendants and the Treasurer have offered competing
18 arguments for whether Egeck’s and Weddell’s compensation can satisfy an inference of
19 scienter. Because of the deficiencies in the Consolidated Complaint already outlined in
20 this Order and the potential for amendment, it would be premature for the Court to “assess
21 all the allegations holistically” and determine whether a “reasonable person [would] deem
22 the inference of scienter at least as strong as any opposing inference.” *Id.* at 326.
23 Accordingly, the Court declines to address the parties’ motive arguments at this juncture,
24 without prejudice to Defendants raising the argument in response to any amended
25 complaint as part of the holistic scienter analysis.

26 **b. Confidential Witnesses**

27 “Where the plaintiff relies upon statements by confidential witnesses, the complaint
28 must also pass two additional hurdles”: (1) “the confidential witnesses whose statements

1 are introduced to establish scienter must be described with sufficient particularity to
2 establish their reliability and personal knowledge” and (2) “those statements which are
3 reported by confidential witnesses with sufficient reliability and personal knowledge must
4 themselves be indicative of scienter.” *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130,
5 1144–45 (9th Cir. 2017) (citation and quotation marks omitted). The Ninth Circuit has
6 held that witnesses were alleged with sufficient particularity where the complaint included
7 “each confidential witness’s job description and responsibilities, and, in some instances,
8 the witness’s exact title and to which . . . executive the witness reported.” *Id.* at 1045
9 (quotation marks omitted). But ultimately, the “complaint must provide an adequate basis
10 for determining that the witnesses in question have personal knowledge of the events they
11 report.” *Zucco, LLC v. Digimarc Corp.*, 552 F.3d 981, 995 (9th Cir. 2009). Further, even
12 if a confidential witness is described with sufficient specificity, the complaint may
13 nevertheless fail to “allege with particularity facts supporting its assumptions that the
14 confidential witnesses were in a position to be personally knowledgeable of the information
15 alleged.” *Id.* at 996.

16 Defendants argue the Consolidated Complaint’s references to former employees’
17 statements do not show scienter because not enough information is included to “establish
18 their reliability and knowledge” and the statements are not otherwise indicative of scienter.
19 (Doc. 34 at 17–18.) Defendants assert the Treasurer should have alleged “when each
20 employee worked at Leslie’s, where they worked, [and] what their responsibilities
21 entailed.” (*Id.* at 17.) They also argue the Consolidated Complaint contained no
22 allegations showing “temporal proximity between the witness observations and
23 Defendants’ purportedly false or misleading statements.” (*Id.* (citation omitted).) Nor did
24 the Consolidated Complaint contain any allegations that the former employees had “any
25 interactions with the Individual Defendants” or “insight into Leslie’s supply chain.” (*Id.*
26 at 18 (emphasis omitted); Doc. 38 at 9.)

27 The Treasurer contends that the Consolidated Complaint sufficiently describes the
28 former employees by including information about “job description or responsibility and

1 duration of employment,” and that it need not “identify the former employees’ exact dates
2 of employment.” (Doc. 37 at 20.) The Treasurer also argues that non-executive
3 confidential witnesses can still be credited even if they had no interaction with the
4 defendants. (*Id.* at 21.)

5 The Court disagrees with Defendants’ arguments that the Treasurer was required to
6 demonstrate that the former employees’ observations had “temporal proximity” to the
7 alleged misstatements. The Ninth Circuit has stated that a court may properly consider
8 statements from former employees who had knowledge even predating the class period,
9 because it could “confirm what a defendant should have known during the class period.”
10 *Webb*, 884 F.3d at 851 n.1 (citation omitted); *see also E. Ohman*, 81 F.4th at 939 (finding
11 former employee’s statements about the defendant’s “practices in the period immediately
12 preceding the Class Period” were “relevant and probative [in] showing how [the defendant]
13 would have behaved and what he would have known during the . . . Class Period”). So
14 even if the former employees were employed before the alleged misstatements were made,
15 that alone would not be a valid basis to discount their statements. *Cullen v. Ryvyl Inc.*,
16 2024 WL 4536471, at *9 n.6 (S.D. Cal. 2024) (“[T]here is no rule that confidential
17 witnesses must have been employed during the class period at all, let alone for the whole
18 time.”). In any event, the Consolidated Complaint makes clear that the former employees’
19 observations occurred during the Class Period and at the same time as several alleged
20 misstatements, so their observations would meet Defendants’ test. (Doc. 30 ¶¶ 35
21 (observation by former allocations and planning analyst in 2022), 36 (observations by
22 general manager and former inventory planner in or around 2022), 37 (observation by
23 former district manager in 2022).)

24 Additionally, at the motion to dismiss stage, the Treasurer did not need to provide
25 the former employees’ exact dates of employment or their locations. (Doc. 34 at 17.) The
26 Treasurer alleged that each of the former employees worked for Leslie’s during the Class
27 Period, which is sufficient. (Doc. 30 ¶¶ 35–37.) Likewise, the Treasurer did not need to
28 identify each former employee by location. Defendants argue that each location has

1 different inventory turnover rates, (Doc. 34 at 17 n.13), but even if that is true, this
 2 argument relies on facts outside of the Consolidated Complaint that the Court may not
 3 consider in resolving the motion to dismiss. *See, e.g., Romero v. San Bernardino Cnty.*
 4 *Sheriff's Dep't*, 2012 WL 13426225, at *5 n.31 (C.D. Cal. 2012) (“[T]he court cannot
 5 consider the factual contentions the parties have made in their briefs in deciding this
 6 motion.”).

7 The Consolidated Complaint, however, does not sufficiently establish the former
 8 employees’ reliability and personal knowledge. For instance, the Consolidated Complaint
 9 provides no information about the job responsibilities for the former allocations and
 10 planning analyst or the former inventory planner that would show the former employees
 11 had personal knowledge about, for example, what “management’s goal” was or how it was
 12 “internally recognized that [Leslie’s] financial projections for 2023 were unachievable.”
 13 (Doc. 30 ¶¶ 35–36.) *Cf. Nguyen*, 962 F.3d at 416–17 (rejecting statements of confidential
 14 witness that lacked detail); *Zucco*, 552 F.3d at 996–97 (rejecting allegations by confidential
 15 witness who “was a human-resources employee who . . . had no firsthand knowledge of
 16 the workings of the finance or corporate departments”). It is also unclear how the cited
 17 district manager (1) knew that “Leslie’s maintained records of customers’ purchasing
 18 histories and knew whether they were sitting on excess supplies of products”; (2) knew
 19 that, because of this data, “management was pushing stores to sell excess amounts of
 20 chemical products”; or (3) personally knew—as opposed to through hearsay or gossip—
 21 that stores in his district were being overstocked. (Doc. 30 ¶ 37.) *Cf. Espy*, 99 F.4th at 537
 22 (confidential witness’s reliance “on secondhand information” undermined testimony
 23 because it was “unclear whether [certain] statements [came] from general knowledge,
 24 gossip, or the meeting where [the witness] was present”); *Costas v. Ormat Techs., Inc.*,
 25 2019 WL 6700199, at *5 (D. Nev. 2019) (“While Plaintiffs allege that [a former employee]
 26 had some sort of access to [the defendant’s] financial models, they do not provide any
 27 information which would allow the Court to determine the extent of [the former
 28 employee’s] personal familiarity with those models.”). In essence, the Consolidated

1 Complaint fails to demonstrate how these former employees came to know certain
 2 information. *See E. Ohman*, 81 F.4th at 940 (crediting former employee statements where
 3 the complaint “explain[ed] how [the former employees] obtained their knowledge”);
 4 *Glazer*, 63 F.4th at 771 (crediting confidential witness statements where the complaint
 5 “provide[d] a basis for each [witness’s] knowledge about the specific statements he
 6 made”).

7 Because the Court is granting leave to amend, however, the Treasurer may be able
 8 to cure these deficiencies by amendment. Accordingly, as mentioned, the Court declines
 9 at this time to determine conclusively whether the former employees’ statements are
 10 indicative of scienter.

11 **c. Core Operations**

12 Defendants’ final basis for challenging scienter is that the Treasurer cannot rely on
 13 a core operations theory because there are insufficient allegations that pool chemical
 14 inventory is a “critical core operation” and insufficient allegations of Egeck’s and
 15 Weddell’s knowledge of information supposedly conflicting with what they told
 16 shareholders. (Doc. 34 at 18–19.)

17 The “core operations” doctrine permits the Court to “infer that facts critical to a
 18 business’s core operations or an important transaction are known to a company’s key
 19 officers.” *Webb*, 884 F.3d at 854 (quotation marks omitted). Typically, to use this theory
 20 to support a strong inference of scienter, the case must “involve[s] specific admissions from
 21 top executives that they are involved in every detail of the company or where the nature of
 22 the relevant fact is of such prominence that it would be absurd to suggest that management
 23 was without knowledge of the matter.” *Espy*, 99 F.4th at 539 (quotation marks omitted).
 24 As for specific admissions from top executives, allegations that the executives “signed off
 25 on every” item or “received detailed reports” does not meet this standard. *Id.* And “[m]ere
 26 access to reports containing undisclosed sales data is insufficient to establish a strong
 27 inference of scienter.” *Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d
 28 1051, 1063 (9th Cir. 2014). Accordingly, to rely on a core operations theory, the plaintiff

1 “face[s] a high burden of proof.” *Prodanova*, 993 F.3d at 1111.

2 First, although the Court reserves ruling on whether the allegations are sufficient for
3 an inference of scienter, the Court is skeptical of Defendants’ argument that the
4 Consolidated Complaint “contains no particularized allegations that demonstrate the
5 Individual Defendants had *actual* access to information that contradicted the challenged
6 statements about Leslie’s anticipated consumer demand or its inventory.” (Doc. 34 at 19.)
7 Egeck and Weddell made several statements on conference calls with investors addressing
8 Trichlor/chlorine-based chemical demand and inventory and also affirmatively stating that
9 they carefully track such information. (Doc. 34-3 at 5 (“With regard to chlorine tabs,
10 supply remains constrained and retail prices elevated. . . . The result is that domestic
11 Trichlor capacity is tight and falling short of elevated consumer demand.”); *id.* at 10 (“[W]e
12 track that very carefully. We’re able to see by consumer what they purchased prior years
13 versus what they’ve purchased year-to-date. It’s one of the things that we try to pay a lot
14 of attention to. And we just haven’t seen any indication of any meaningful pull forward.”);
15 *id.* at 14 (addressing inventory and stating that Leslie’s was “pre-buying and pulling
16 inventory in to get it through [Leslie’s] self-distributed network” and Leslie’s had “the
17 inventory either sitting in . . . distribution centers or moved out to [its] store locations”); *id.*
18 at 17–18 (stating that Leslie’s was “in line to buy even more [Trichlor] next year”); *id.* at
19 29 (“We took a – made a strategic decision last year at a heavily invested inventory. To
20 remember, most of the inventory that we have is non-discretionary. It’s not subject to
21 fashion, risk or obsolescence. . . . [W]e worked very hard and closely with our vendors to
22 procure effectively as much inventory as we can to meet the heightened demand that we
23 see today”); *id.* at 47 (“[M]ost of the inventory growth is in trichlor as well as
24 equipment, but not all equipment, some equipment.”); *id.* at 55–56 (discussing inventory,
25 “expect[ing] inventory to remain elevated,” and noting that the “two primary areas of
26 increase year on year for Q3 were trichlor and equipment,” which should not “necessarily
27 [be] view[ed] . . . as permanent increases, but in the current environment [it was] the
28 appropriate level of inventory,” and which Leslie’s would “actively manage in the year-

1 end and through next year”); *id.* at 63 (addressing the “current elevated inventory
 2 position”); *id.* at 84 (addressing Trichlor demand); *id.* at 89 (addressing inventory levels,
 3 stating that Leslie’s approach to inventory was “strategic” and “purposeful,” and that
 4 Leslie’s was not “backing off of that until [it had] absolute certainty” of being at “levels of
 5 inventory to serve the demand [it saw]”); Doc. 34-4 at 4–5 (discussing Trichlor sales); *id.*
 6 at 7 (addressing inventory); *id.* at 11 (same and describing the growth in inventory as
 7 “[v]ery purposeful”); *id.* at 14 (“I would say everybody is fully inventoried in Trichlor.”);
 8 *id.* at 16 (discussing Trichlor inventory and “anecdotal” information from stores and noting
 9 “we ask our general managers what’s going on”); *id.* at 17 (discussing inventory and
 10 Trichlor pricing); *id.* at 18 (addressing Trichlor inventory); *id.* at 24 (discussing Trichlor
 11 sales and pricing); *id.* at 26 (discussing inventory); *id.* at 29 (discussing what “pool owners
 12 have said” with regard to supply chain issues); *id.* at 32 (describing increase in inventory
 13 as “[h]ighly unusual” and that Leslie’s had “never increased inventory in the back half of
 14 the year”); *id.* at 33 (discussing Trichlor pricing); *id.* at 35 (“When you think about where
 15 we’re at from an inventory position today versus pre-pandemic, it’s certainly elevated and
 16 very intentional.”); *id.* at 38 (discussing Trichlor product size “penetration . . . over the last
 17 few years”).)

18 That Egeck and Weddell specifically and frequently addressed demand and
 19 inventory for Trichlor/chlorine-based chemicals,⁷ including in response to questions from
 20 attendees, suggests that it was “unlikely that [they were] not aware of” relevant information
 21 concerning these issues. *Reese v. Malone*, 747 F.3d 557, 572 (9th Cir. 2014), *overruled on*
 22 *other grounds by City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech.,*
 23 *Inc.*, 856 F.3d 605, 616 (9th Cir. 2017); *id.* (“It is unclear what further facts plaintiffs would
 24 need to plead to create a stronger inference that [the defendant] had access to information
 25 she discussed publicly.”); *see also Zucco*, 552 F.3d at 1000.

26 Further, some of Leslie’s conference calls suggest that inventory and the chlorine
 27 market were important topics around the time of some of the alleged misstatements, which

28 ⁷ (See, e.g., Doc. 34-3 at 30–31 (“[Y]ou’ve talked a lot about it [the Trichlor market]
 Yeah, we get this question a lot”).)

1 further undermines that Defendants would not have had actual access to relevant
 2 information. (Doc. 34-3 at 29 (“[I]nventory has been a popular topic in retail for the last
 3 couple of weeks. How does inventory look for you guys?”); *id.* at 30 (“A lot of investors
 4 ask us about the state of the trichlor market, implications for chlorine tab prices.”); *id.* at
 5 54 (noting “media coverage of the chlorine shortage last year” and that the shortage was
 6 due to “really extraordinary events”); *id.* at 93 (“We acquired a lot of customers with the
 7 chlorine shortage and media blitz”); *id.* at 98 (describing a “chlorine media coverage
 8 event”); Doc. 34-4 at 14 (stating there was “a lot of chatter about [the] potential outcome
 9 [of price deflation for Trichlor]”); *id.* at 15 (“the big Trichlor disruption”); *id.* at 37 (“I
 10 mean, 2021 and 2022, consumers were very concerned about scarcity of product during
 11 pool season, as were we.”).)

12 The Court agrees with Defendants, however, that the Treasurer has not pled
 13 sufficient allegations to apply a core operations theory based solely on Trichlor’s
 14 prominence to Leslie’s business due to the “high burden” imposed by the Ninth Circuit.
 15 *Prodanova*, 993 F.3d at 1111. On one hand, Egeck included chemicals in a list of Leslie’s
 16 “core businesses.” (Doc. 34-3 at 12; *see also id.* at 20 (“Our real business is the 14 million
 17 bodies of water that are out there that need ongoing non-discretionary maintenance. So . .
 18 . that’s where we’re really focused on.”); Doc. 34-4 at 18 (stating that Leslie’s “control[s]
 19 most of [the Trichlor] supply chain now”).) It is thus difficult to imagine how chemicals
 20 such as Trichlor/chlorine could not meet the threshold for “core operations” when taking
 21 such statements at face value. (*See also* Doc. 34-3 at 72 (“For chemicals [the percentage
 22 of product offerings that are exclusive to Leslie’s] is over 85%.”); *id.* at 99 (describing
 23 chemicals “and particularly trichlor” as the “promotional vehicle for the industry” and a
 24 “proven traffic driver for pool supply retailers, [Leslie’s] included”).) That said, it is
 25 unclear whether Trichlor/chlorine-based chemicals specifically, as opposed to chemicals
 26 overall, could be considered in and of itself in Leslie’s core businesses. The Consolidated
 27 Complaint alleges that 45% of Leslie’s business is in chemicals but also alleges that
 28 Trichlor only comprises 15% of Leslie’s total sales. (Doc. 30 ¶ 95.)

1 The Court thus cannot, on the allegations of the Consolidated Complaint, deem
 2 Trichlor/chlorine-based chemicals a core operation solely on prominence grounds. *Bajjuri*
 3 *v. Raytheon Techs. Corp.*, 641 F. Supp. 3d 735, 765 (D. Ariz. 2022). The Treasurer may,
 4 however, be able to cure this deficiency, so the Treasurer may amend these allegations if
 5 it so chooses. Again, the Court will not undertake the holistic analysis of whether
 6 Defendants’ statements raise a strong inference of scienter at this time. *See S. Ferry LP,*
 7 *No. 2 v. Killinger*, 542 F.3d 776, 784 (9th Cir. 2008) (stating that the “core-operations
 8 inference can be one relevant part of a complaint that raises a strong inference of scienter”).

9 **d. Sarbanes-Oxley Certifications**

10 Defendants argue that the SEC form certifications (called “SOX certifications”) by
 11 Egeck and Weddell are insufficient to give rise to knowledge. (Doc. 34 at 21.) The
 12 Treasurer agrees that SOX certifications are “insufficient on their own” to raise a strong
 13 inference of scienter but argues the certifications can be considered in the holistic analysis.
 14 (Doc. 37 at 22.) The Treasurer is correct. *Zucco*, 552 F.3d at 1004 (“Sarbanes-Oxley
 15 certifications are not sufficient, *without more*, to raise a strong inference of scienter.”
 16 (emphasis added) (quotation marks omitted)); *Bajjuri*, 641 F. Supp. 3d at 762 (considering
 17 the SOX certifications in the holistic analysis only). As discussed, however, the Court will
 18 not engage in the holistic scienter analysis at this time.

19 **e. Weddell’s Departure**

20 The Treasurer contends that Weddell’s departure “announced concurrently with the
 21 Q3 2023 disclosure” supports scienter. (Doc. 37 at 21.) Defendants argue that the
 22 Treasurer did not allege any facts “connecting the departure to the alleged fraud” and notes
 23 that Weddell “remained with Leslie’s in an advisory role for months following his
 24 departure,” which they argue “opposes a scienter inference.” (Doc. 38 at 10.)

25 “[A]n employee’s resignation supports an inference of scienter only when the
 26 resignation at issue was uncharacteristic when compared to the defendant’s typical hiring
 27 and termination patterns or was accompanied by suspicious circumstances.” *City of*
 28 *Dearborn Heights*, 856 F.3d at 622 (quotation marks omitted). The “[m]ere conclusory

1 allegation[] that a financial manager resigns or retires . . . shortly before the corporation
 2 issues [a statement] . . . without more, cannot support a strong inference of scienter.” *Id.*
 3 (first three alterations in original) (quotation marks omitted).

4 The Court agrees with Defendants that the Consolidated Complaint’s allegations
 5 concerning Weddell’s departure are insufficient on their own to establish scienter, even
 6 though Weddell’s departure was announced at the same time as the disappointing financial
 7 results. *See, e.g., id.* (rejecting that CFO’s resignation “coinciding with [company’s]
 8 announcement . . . that it would record” a significant reduction in its goodwill was
 9 sufficient “without more” to support a strong inference of scienter); *Zucco*, 552 F.3d at
 10 1002 (holding the “bare fact of [an officer’s] retirement cannot support . . . allegations of
 11 scienter” where the complaint did not “indicate whether [the officer] was nearing
 12 retirement age, whether he left to pursue other opportunities, or even the length of his
 13 tenure”); *Ng. v. Berkeley Lights, Inc.*, 2024 WL 695699, at *15 (N.D. Cal. 2024)
 14 (“[R]esignations that occur shortly after a company announces poor financial results do not
 15 suggest that an executive intentionally deceived investors unless the plaintiff plead[s] facts
 16 refuting the reasonable assumption that the resignations occurred as a result of the poor
 17 results themselves.” (second alteration in original) (quotation marks omitted)); *Cullen*,
 18 2024 WL 4536471, at *11 (resignation of CFO did not raise a strong inference of scienter
 19 where the “allegations surrounding [his] departure [were] not specific enough to show that
 20 . . . suspected fraud was the reason for his resignation,” as opposed to errors or inadequate
 21 supervision over his department). The Treasurer may be able to cure these deficiencies,
 22 however, in an amended complaint.

23 3. Loss Causation

24 “The loss causation prong is simply a variant of proximate cause.” *Espy*, 99 F.4th
 25 at 540 (quotation marks omitted). To sufficiently plead loss causation, the plaintiff must
 26 plausibly allege that the “misstatement, as opposed to some other fact, foreseeably caused
 27 [the plaintiff’s] loss.” *Id.* (citation omitted). “In a fraud-on-the-market case . . . loss
 28 causation begins with the allegation that the defendant’s misstatements (or other fraudulent

conduct) artificially inflated the price at which the plaintiff purchased her shares.” *Genius Brands*, 97 F.4th at 1183 (quotation marks omitted). “Next, a plaintiff must allege that the truth became known.” *Id.* (quotation marks omitted). Last, a “plaintiff must allege that the revelation caused the fraud-induced inflation in the stock’s price to be reduced or eliminated.” *Id.* (quotation marks omitted). “At that point, the plaintiff has suffered an economic loss caused by the misstatements because she is no longer able to recoup in the marketplace the inflationary component of the price she originally paid.” *In re Bofl Holding, Inc. Sec. Litig.*, 977 F.3d 781, 789 (9th Cir. 2020).

Although a “disclosure followed by an immediate drop in stock price is more likely to have caused the decline,” there is no “bright-line rule requiring an immediate market reaction.” *Irving Firemen’s Relief*, 998 F.3d at 407 (citation omitted); *see also Bofl Holding*, 977 F.3d at 790 (outlining “ground rules” for what qualifies as a corrective disclosure). “The plaintiff need not show that a misrepresentation was the *sole* reason for a price decline, but rather that it was one substantial cause.” *Genius Brands*, 97 F.4th at 1183 (quotation marks omitted). Ultimately, a plaintiff “need only show a causal connection between the fraud and the loss.” *Id.* (citation omitted). But the allegations still must be sufficiently pled to meet the requirements of the PSLRA. *Irving Firemen’s Relief*, 998 F.3d at 404.

Defendants argue the Treasurer has not sufficiently pled loss causation because (1) the Treasurer “fail[s] to specify which of the Defendants’ statements were [revealed to be] untrue by these subsequent disclosures” and (2) the allegations “fail to establish that the revelation of any ‘truth’ about Defendants’ alleged misstatements caused [the] purported losses.” (Doc. 34 at 22–23 (second alteration in original) (quotation marks omitted).) As for the second argument, Defendants reason that “[n]one of the challenged statements discuss Leslie’s anticipated sales or profits; they focus on increasing inventory levels.” (*Id.* at 23.) The Treasurer argues that there are sufficient allegations of loss causation, largely mirroring its allegations for the Consolidated Complaint’s sufficiency as a whole. (*See* Doc. 37 at 24–25.)

As with many of the parties' other arguments, the Court does not at this time rule on the sufficiency of the Treasurer's loss causation allegations, in large part because the Consolidated Complaint is not sufficiently clear about what specific portions of statements are allegedly false or how. Thus, it would be difficult for the Court to decide whether the Treasurer sufficiently pled a causal relationship between the alleged misstatements and the drop in share price, because the scope of the alleged misstatements and their tie to the alleged "reveal" in July 2023, is still uncertain.

C. Count Two: Violation of Section 20(a)

"Claims under Sections 20(a) and 20A of the Exchange Act are derivative and therefore require an independent violation of the Exchange Act, so [plaintiffs] must successfully plead a Section 10(b) claim to succeed on their claims under Sections 20(a) and 20A." *In re Facebook, Inc. Sec. Litig.*, 87 F.4th 934, 947 (9th Cir. 2023) (quotation marks omitted). Because the Treasurer has not sufficiently pled a violation of Section 10(b), the Court also dismisses the derivative Section 20(a) claim. *Khoja*, 899 F.3d at 1018 ("Section 20(a) claims may be dismissed summarily . . . if a plaintiff fails to adequately plead a primary violation of section 10(b)." (alteration original) (citation omitted)).

V. CONCLUSION

For the reasons explained, the Consolidated Complaint is dismissed with leave to amend, because the Treasurer may be able to cure the deficiencies raised in this Order through amendment.

Accordingly,

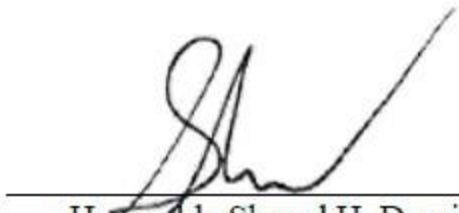
IT IS ORDERED that Defendants' Motion to Dismiss (Doc. 34) is **granted**. The Consolidated Complaint is dismissed.

IT IS FURTHER ORDERED that the Treasurer may have **30 days** to file an amended complaint. Consistent with LRCiv 15.1, the Treasurer shall file, concurrently with any amended complaint, a notice of filing the amended pleading that attaches a copy of the amended pleading indicating in what respect it differs from the Consolidated Complaint. If the Treasurer does not file an amended complaint within 30 days, the Clerk

1 of Court is directed to enter judgment in favor of Defendants and close this case.

2 **IT IS FURTHER ORDERED** that Defendants may have **30 days** to respond to
3 any amended complaint.

4 Dated this 14th day of July, 2025.

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Honorable Sharad H. Desai
United States District Judge